

**Civil Pretrial & Trial Procedures of Judge Dana M. Sabraw**

Unless otherwise ordered, matters before Judge Sabraw shall be conducted in accordance with the following practices:

**1. Communications with Chambers**

**A. Letters.** Letters to chambers are permitted only if copies are simultaneously delivered to all counsel. Copies of correspondence between counsel shall not be sent to the Court.

**B. Faxes.** Faxes to chambers are permitted only if copies are simultaneously faxed or delivered to all counsel. Do not follow with a hard copy. The fax number is 619-702-9942.

**C. Telephone Calls.** Telephone calls to chambers are permitted only for matters such as docketing, scheduling or calendaring. Call chambers at 619-557-6262, and address your inquiries to the Law Clerks.

**D. Requests for Adjournments or Continuances.** All requests for adjournments or continuances should be in writing and state (1) the original date, (2) the number of previous requests for adjournment or continuance, (3) whether these previous requests were granted or denied, (4) the grounds for adjournment or continuance, (5) whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent, and (6) whether the requested adjournment or continuance affects any other scheduled dates. If the parties agree to a continuance or adjournment, they may submit a Stipulation and Order to this effect at the earliest practicable time. If the request is for an adjournment of a court appearance, absent an emergency it shall be made at least 48 hours before the scheduled appearance.

**2. Initial Status Conference – Early Neutral Evaluation.** Pursuant to Civil Local Rule 16.1(c), within 45 days of the filing of an answer, counsel and the parties shall appear before the magistrate judge supervising discovery for an early neutral evaluation (“ENE”) conference. This appearance shall be made with authority to discuss and enter into settlement. The parties should consult the magistrate judge to determine if any special procedures exist for conducting the ENE conference.

**3. Initial Scheduling Order.** An initial scheduling order will be issued by the magistrate judge assigned to the case. The scheduling order sets the following: (1) date of discovery planning meeting pursuant to Rule 26(f) of the Federal Rules of Civil Procedure; (2) date to lodge discovery plan with the Court; (3) date for initial disclosures under Rule 26(a)(1)(A)-(D); and (4) date of the Case Management Conference.

**4. Case Management Conference.** Counsel and parties will meet with the magistrate judge for a case management conference (“CMC”). Prior to the CMC all counsel will discuss discovery issues and endeavor to resolve any disputes. Procedures for the CMC are set forth in Civil Local Rule 16.1(d). A case management order will issue following the CMC, and will set, *inter alia*, a discovery

schedule, a deadline for filing pretrial motions, and a pretrial conference with Judge Sabraw pursuant to Paragraph 8 below.

**5. Temporary Restraining Orders/Preliminary Injunctions.** Temporary restraining orders and preliminary injunctions will issue pursuant to Rule 65 of the Federal Rules of Civil Procedure. While temporary restraining orders may be heard ex parte, the Court may exercise its discretion and have the parties serve the other side before proceeding. Alternatively, the Court may issue a limited temporary restraining order to preserve the status quo pending further briefing on the issue. The Court generally will give notice by telephone when the hearing will occur.

**6. Discovery and Protective Orders.** All motions to compel discovery are referred to the magistrate judge assigned to the case. Motions pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure will not be heard unless the parties previously have met and conferred concerning all disputed issues. Civil Local Rule 26.1(a). Protective orders shall issue only for good cause shown, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, and may be modified by the Court at any time. The parties should consult the magistrate judge assigned to the case for any special procedures regarding discovery issues.

**7. Motions.**

**A. Scheduling a Hearing Date.** Pursuant to Civil Local Rule 7.1(b)(2), all dates for motion hearings must be obtained by calling the Law Clerk. Briefing schedules are set forth in the Local Rules. There are no additional filing deadlines, unless the Court sets a specific briefing schedule in the case. A hearing date will not be reserved unless the motion is filed on the date contact is made with the Law Clerk to schedule the hearing date.

**B. Oral Argument.** At the Court's discretion, motions will be decided on the papers and without oral argument, in accordance with Civil Local Rule 7.1(d)(1). The Court will notify counsel approximately one week before the scheduled hearing date whether the matter will be decided (1) without oral argument and on the papers, or (2) after oral argument, in which case a tentative ruling generally will be issued before the assigned hearing date. Oral argument will occur on the Court's Friday Calendar at 2:30 p.m. Telephonic argument is permitted at the Court's discretion, but arrangements need to be made in advance of the hearing. Civil Local Rule 7.1(d)(3).

**C. Courtesy Copies.** Courtesy copies of pleadings, marked as such, shall be submitted to chambers, as soon as practicable after filing.

**8. Pretrial Conference.**

**A. Matters Covered.** Pursuant to Civil Local Rule 16.1(f)(7), the Court requires the plaintiff to file a pretrial order no less than five days before the pretrial conference. The pretrial order must include all elements set out in Civil Local Rule 16.1(f)(7)(c) and any other issues relevant to the trial. Counsel shall be prepared to discuss scheduling, time limits, jury selection – if such right has been

reserved, settlement, consent to magistrate judge jurisdiction for trial, and all other issues related to trial. Pretrial conferences are held on the Court's Friday Calendar at 10:30 a.m.

**B. Trial and Exchange Dates.** A trial date will be set at the pretrial conference, along with a briefing schedule for motions in limine and a date by which to file a final list of witnesses and exhibits, and – in jury cases – jury instructions, verdict forms, and a joint statement of the case to be read to the jury. The Court also will set reasonable time limits for the trial in consultation with counsel at the pretrial conference.

## **9. Trial Procedures.**

**A. Motions in Limine.** Generally, motions in limine will be heard two weeks before trial. The motions must be filed and served two weeks before the scheduled hearing date, with oppositions due one week before the hearing.

**B. Jury Instructions.** Jury instructions shall be submitted to the Court one week before trial in the following format:

(1). The parties are required **jointly** to submit one set of agreed upon instructions. To this end, the parties are required to serve their proposed instructions upon each other at least ten days before the instructions are to be filed with the Court. The parties then should meet, confer, and submit to the Court one complete set of agreed upon instructions. The Court prefers to use standard pattern instructions, such as the Ninth Circuit Model Jury Instructions, Civil, the Judicial Council of California Civil Jury Instructions, or other pattern instructions from other states, if applicable.

(2). If the parties cannot agree upon one complete set of instructions, they are required to submit one set of instructions to which they have agreed, and two sets (one for each party) of supplemental instructions to which they have not agreed.

(3). The joint instructions and supplemental instructions must be presented to the Court one week before trial, along with any objections to the supplemental instructions. All objections to supplemental instructions shall be in writing, set forth the challenged jury instruction in its entirety, identify the objectionable language, and contain citation to authority explaining why the instruction is improper. Where applicable, the objecting party shall submit an alternative instruction.

(4). The parties are required to submit the proposed joint set of instructions and proposed supplemental instructions in the following format:

(a). Two copies of each instruction should be provided.

(b). The first copy should indicate the number of the proposed instruction, the instruction, and the authority supporting the instruction.

(c). The second copy should contain **only** the proposed instructions on plain paper, that is, not on pleading paper. No other marks or writings should be present. This copy also should be presented on a floppy disk in WordPerfect format (any version).

(5). All instructions should be short, concise, and neutral statements of law.

(6). Any modification to a standard instruction must be identified by specifying the modification to the original instruction and the authority supporting the modification.

**C. Trial Briefs.** Pursuant to the Local Rule 16.1(f)(10), the parties may, no later than 7 days before the date of trial, serve and file briefs on all significant disputed issues of law, including foreseeable procedural and evidentiary issues.

**D. Proposed Voir Dire Questions/Jury Questionnaire and Verdict Forms.** The parties shall submit proposed voir dire questions and verdict forms one week before trial. The Court also will consider a jury questionnaire if requested at the pretrial conference, and approved by the Court.

**E. Jury Selection.** The following is a description of the struck panel method by which the jury will be selected. There are many variations on this basic technique, and it is important that counsel understand exactly what procedure will be followed. The procedure requires counsel to take more careful notes and to observe more panelists than under the traditional jury box selection method.

The Courtroom Deputy Clerk will provide counsel with a numerical list of the jury panel at the start of voir dire, along with a seating chart. Jurors assigned seat numbers one through fourteen will be questioned.

The number of jurors questioned (fourteen) is calculated as follows: the number of jurors to be selected (generally eight) plus the number of peremptory challenges (generally six or three per side). Thus, voir dire will be conducted from fourteen panelists for the usual eight-person jury. If there is to be a ten-person jury, two additional panelists will be added.

The Court will conduct the initial jury voir dire. On a case by case basis, the Court may permit follow-up voir dire conducted by the attorneys. If voir dire by counsel is permitted, fifteen minutes per side on non-complex cases generally will be allowed.

After the Court and counsel have voir dired the panel, counsel may approach the bench if they have challenges for cause. If any challenges for cause are sustained, the removed panelists will be replaced by inserting new panelists from the venire so that a full panel exists before any peremptory challenges are exercised. The new panelists will be voir dired in accordance with the above.

The exercise of peremptory challenges will follow next. Counsel will exercise alternating challenges – generally outside the presence of the prospective jurors – by calling out the jurors’

numbers they wish to excuse. The process will be repeated until all peremptory challenges are exhausted.

Note that a party may waive its right to challenge but may **not** reserve. Thus, if counsel passes one time, he or she may not exercise any more peremptory challenges. Also note that challenges may be made to any of the panelists regardless of where that panelist appears in the array.

When each side has exhausted its peremptory challenges, the first eight or ten persons constitute the jury.

**F. Presentation of Evidence.** Please abide by the following rules:

Do not enter the well, except during voir dire, opening statement and closing argument.

Conduct all examination of witnesses from the podium.

Feel free to approach witnesses during examination, but first seek permission from the Court. Please keep your visit to the witness stand brief, *e.g.*, by quickly orienting a witness with an exhibit and returning to the podium.

Where a party has more than one lawyer, only one lawyer may conduct the examination of a given witness and that lawyer alone may make objections concerning that witness.

When objecting, state only the legal ground for the objection; *e.g.*, “Objection, hearsay.” Speaking objections are not permitted, unless the Court requests further information from counsel.

Refrain from talking to each other in the presence of the jury. If clarification on a matter is needed, please seek clarification from the Court and not directly from counsel.

Do not vouch for evidence, *e.g.*, “I believe....”

Refrain from facial expressions, nodding or other conduct that projects an opinion, favorable or unfavorable, concerning testimony of a witness or argument by counsel.

Do not address or refer to witnesses or parties by first name alone, except for young witnesses under age 16. Use appropriate titles, *e.g.*, Mr., Ms., Mrs., Agent, Officer, Doctor, etc.

**G. Bench Conferences.** Sidebar conferences are disfavored. If counsel desire to speak to the Court outside the jury’s presence, counsel may request to do so at the start of the recess or at the end of the day. Requests to see the Court outside the presence of the jury when the Court is about to begin the day of trial or reconvene following a recess generally will not be granted. These matters usually can await the next recess.

**H. Exhibits.** Each counsel should submit a list of exhibits to the Courtroom Deputy Clerk on the first day of trial. All exhibits must be pre-marked on the first day of trial. Exhibit stickers may be obtained from the Courtroom Deputy Clerk or the intake window of the Clerk's Office, in advance of trial. Plaintiffs should mark their exhibits numerically and defendants by alphabetic letters. Civil Local Rule 16.1 (f)(2)(c).

Counsel must show each other all exhibits, except for those intended to impeach witnesses which may be shown at sidebar and cleared by the Court immediately before the exhibit is intended to be used. When referring to an exhibit, counsel should refer to its exhibit number whenever possible to ensure a complete and accurate record.

Before publishing an exhibit to the jury, counsel either must move for admission of the exhibit or allow the Court to inquire whether the opposing side has any objection to publication.

Exhibits generally will be admitted at the time each side rests.

Pursuant to Local Civil Rule 79.1, all exhibits will be returned to the moving party at the conclusion of the trial.

## **I. Trial Schedule.**

**(1). Trial Days.** Generally, trials are scheduled from 9:00 a.m. to 4:30 p.m., beginning on Mondays. Trials do not proceed on Friday unless a jury is deliberating. Jury deliberations proceed from 9:00 a.m. to 4:30 p.m. The Court will notify the parties of deviations from this schedule and will attempt to accommodate jurors, witnesses and counsel, if conflicts arise.

**(2). Time Limits.** As referenced in Paragraph 8 (B) above, it is the practice of the Court to set a reasonable time limit for the entire trial. This time limit reflects the estimates of counsel but is based on the Court's independent assessment of the time necessary to complete the trial. Such a time limit is all-inclusive, and includes jury selection, opening statements, presentation of evidence, closing argument, and sidebar and jury instruction conferences. Time limits are subject to exception for good cause shown. The courtroom deputy clerk will keep track of time and inform the parties periodically of the remaining time, generally at the end of each trial day.

**(3). Witness Coordination.** The Court attempts to accommodate witnesses' schedules and may permit counsel to call witnesses out of sequence if warranted by the circumstances. Counsel must anticipate any such possibility and discuss it with opposing counsel and the Court at the earliest possible time. At the end of each trial day, counsel will be invited to disclose the next day's witnesses to ensure orderly presentation of witnesses and adequate preparation for cross-examination.

**10. Courtesy.** Be courteous and respectful at all times, in all settings. Counsel may expect such from the Court, and the Court expects such from counsel. Please be familiar with and abide by Civil Local Rule 83.4.